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No. 72-1123

IN THE

Supreme Court of The United States

OCTOBER TERM 1972

RALPH R. WILLIAMS,

Petitioner

vs.

STATE OF OHIO,

Respondent

STATEMENT OF THE CASE

On June 24, 1971, a hearing on a motion to suppress the introduction of narcotics, firearms, ammunition, and other evidence at the trial of Petitioner, Ralph R. Williams, was conducted before the trial court. The substance of the defense motion was the assertion that a warrant issued on September 25, 1970 by another member of that court and utilized by the Columbus Police that same day in conducting a search of the premises at 980 Caldwell, Apt. 23, was defective as written and was insufficiently supported by the information presented to the judge by the officers seeking the warrant.

Following identification of the search warrant, an officer of the Columbus Police Vice Squad was examined in court by defense counsel. His recorded testimony indicated that the warrant was directed to the search of an address, *typed* on the affidavit and on the style of the warrant and on the warrant itself, as "980 Caldwell."

Written in black ink beside that number was "#23", indicating the apartment to be searched.

The officer stated that he personally wrote in the apartment number at the same time the judge reviewed the affidavit, the police secretary having omitted it in typing. He also penned the number "23" on the style of the warrant and on the warrant itself at the same time. Inspection of the color of ink (black) used for the signature of the officer on the warrant return and in the affidavit, as opposed to the color of ink (blue) used in the itemization on the return and apparently written by another officer, bore this out.

At the time the affidavit was presented the police officer advised the court that he had used the informant before, that he had furnished reliable information, and that he had brought the officer eleven bags of heroin that day. Also, the officer had gone to the defendant's apartment with the informant prior to issuance of the warrant, and apartment 23 had been specifically pointed out. The defendant took the stand at the hearing following testimony for the prosecution and stated that he was shown the warrant when he arrived at the Caldwell Pl. residence, but that it lacked the inked-in "#23" when he saw it.

The court reserved its ruling on the motion at the close of the presentation of evidence until briefs could be filed. By decision and entry rendered on November 29, 1971 the motion was overruled, the court stating its reliance upon the testimony of the police officers as opposed to the conflicting statements of the defendant himself.

The testimony of the officer presented at trial showed that on September 25, 1970, he and several other officers entered the premises at 980 Caldwell Pl., No. 23, where

an "older lady" and three or four children were present. A search was conducted therein for narcotics, during most of which time the defendant was also present.

State's Exhibit number 1, identified as a large bag by the officer, contained: a large cellophane packet filled with a green plant material and a pill; white tablets, later analyzed as methadone, taken from "beneath or between mattresses of the bed" in the first bedroom searched; a plastic envelope containing raw opium taken from the same bedroom dresser; and 184 pink paper packets with tinfoil, containing a white powder substance later analyzed and identified by the police chemist as opiates of the narcotic morphine. Hanging in sweater pockets in that bedroom were found approximately $1,000.00 in cash and three .22 caliber pistols. Exhibit 3, also containing items found in the bedroom, consisted of one hashish pipe, marijuana cigarette papers, a "spoon cooker", and several plastic bags said to be used to package narcotics. Exhibit 4 consisted of a loaded .22 caliber handgun, taken from the defendant's person in a pat-down on the premises as he arrived.

During the search of the bedrooms the defendant, who was upstairs with the officers, stated, [t]here's no need searching that [other] [bed] room because everything I had was — is in this room." Further, while at the apartment, the defendant informed a police officer that both he and one Shirley Wilson, stated by the defendant to be his common-law wife, lived at 980 Caldwell Pl., No. 23. The defendant also requested the police not to file charges on Shirley Wilson because "Shirley didn't have anything to do with what was going on there."

Following his arrest Ralph Williams was taken to police headquarters, booked and read a statement of his

constitutional rights which he refused to sign. Thereafter, a case history was filled out by Officer Woodard at the station, with the defendant restating that his address was 280 Caldwell Pl., No. 23.

Although he had been read and advised of his constitutional rights, the defendant, who was described as "cooperative," "freely and loosely" related to Officers Mauldin and Woodard the circumstances surrounding the crimes charged. At no time did he indicate that he wished to stop talking or that he wished an attorney to be present. All suggestions of coercion were vehemently denied by the police at trial.

Following the admission of all exhibits and final arguments the court returned a verdict of guilty as to Counts 2, 3, and 4, of the four-count indictment, these being the offenses of illegal possession of narcotics for purposes of sale, keeping a house for illegal sale of narcotics, and unlawful carrying of a concealed weapon, respectively.

LAW AND ARGUMENT

I

THE SEARCH WARRANT

As a general rule, searches supported by warrants are to be preferred to searches conducted without the benefit of judicial scrutiny. As a result, in a doubtful or marginal case a search under a warrant may be sustainable where one without it would fail. *United States* v. *Ventresca*, 380 U.S. 102 (1965), citing *Jones* v. *United States*, 362 U.S. 257 (1960). The facts in the instant case, however, do not represent one of those marginal situations.

Probable cause is tested against presentation of evidence to a magistrate granting a warrant to search and may rest upon evidence which is not legally competent in a criminal trial. *Draper* v. *United States*, 358 U.S. 307 (1959). Thus, the fact that the evidence as to reliability of an informant is hearsay does not invalidate the affidavit, and the fact that the full name of the eventual defendant is not known does not invalidate the warrant. Contrary to defense counsel's argument, it is absolutely irrelevant that the affidavit does not state that the informant saw the defendant at 980 Caldwell. The affidavit does contain the assertion that the informant "has seen narcotics within 980 Caldwell within the last 12 hours, this being the home of one male colored subject known only as Ralph." The purchase of 11 bags of heroin by the informant was conducted at 980 Caldwell Pl., No. 23, on the same day the search warrant was served.

As the Supreme Court stated in *Ventresca*, *supra*, at 108:

"* * * If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a common-sense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. * * *"

The trial court's finding herein as to the validity of the warrant should be sustained to preserve "a system of justice responsive both to the needs of individual liberty and to the rights of the community." *Ventresca, supra,* at 112. The two tests of *Aguilar* v. *Texas,* 378 U.S. 108, 114 (1964) requiring that "the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed * * * was 'credible' or his information 'reliable'," are both fully satisfied in this case.

The informant had bought narcotics at 980 Caldwell, No. 23, within the previous 12 hours and the police officer had viewed the premises in the company of the informant prior to the issuance of the warrant. The informant had been used by that same police officer "about seven" times in the past.

II

STATEMENTS MADE BY THE DEFENDANT

Following his arrest Ralph Williams was transported to Columbus Police Headquarters and presented with a statement of his constitutional rights. That statement,

admitted into evidence, contained a signature line by which a person could indicate his waiver of those rights, including the right to remain silent, and the right to have the assistance of legal counsel before questioning. The form containing these rights was read by the defendant himself and was read to him by the police. He indicated to the officers that he could read and that he understood what he was reading. He also refused to sign the waiver, which fact was stated on the face of the document. The reason for this refusal, as stated by defendant himself during *voir dire*, was that "he wasn't signing no papers, no kind of papers period."

After asking the defendant for personal data, all of which information except his address was immaterial to the eventual merits of the case, the police engaged Ralph Williams in a "free and loose" conversation concerning the facts surrounding his arrest. At no time did the defendant indicate that he wished to stop talking with the officers or that he wanted an attorney present, and on *voir dire* the defendant did not contradict the officer's testimony in this regard.

The substance of the information given the police by the defendant was that he worked at the trafficking of narcotics in the Columbus area on a consignment basis; that two women in an apparently large scale narcotics operation would bring narcotics to Port Columbus by plane, returning then to their point of departure. For every three bags of narcotics he sold, Ralph Williams received one. The telephone number of a place in Detroit was given to the police, from which the defendant obtained the drugs.

In the case at bar it is first important to note that the very "warnings," which the opinion in *Miranda* v. *Arizona*, 384 U.S. 435 (1966) decision compelled the

police to give an accused prior to his interrogation, were fully and adequately given to the defendant. Secondly, the *Miranda* holding does not make it necessary that a *written* form of the required advice be utilized by the police or that the defendant sign a *written* waiver of his rights in order to relinquish them "knowingly and intelligently." Finally, it is clear that some act or statement on the part of the defendant in positive exercise of the rights in question must be asserted in order to halt the questioning. Nowhere in *Miranda* or in any case following to date has it been held that a criminal suspect, having been advised of his rights, may not thereafter voluntarily speak even where he implicates himself in a crime for which he is later indicted and tried. This is the very purpose of the warnings now required, which is to insure that any confession or incriminating statement is of such an untainted nature as to enable its use in court.

While it might be argued under some circumstances that a refusal of the waiver of constitutional rights on a written form may indicate a continuing desire on the part of the accused to remain silent, his subsequent conduct to the contrary logically overrides whatever significance this initial refusal might take and removes the conditions of refusal. *United States* v. *Bayer* (1947), 331 U.S. 532, 540-541. Those conditions obviously cease when the defendant speaks of his own free will to the police.

The trier of fact in the instant case had before him the evidence presented by both the police and the defendant on *voir dire* and during the cases in chief. While defense counsel's obvious purpose in cross-examining the police officer was to attempt to elicit an admission of threats with regard to arrest or prosecution of other

persons, one of whom was stipulated to live at No. 23, 980 Caldwell, these were vigorously denied on *voir dire* by the officer and on subsequent direct examination by the prosecutor. The trier of fact had to decide whether the defendant's statements made during *voir dire* were false and the statements by the police were true, and this does not compel the conclusion that the state failed in its burden of proof. If the court believed the testimony by the police, there then follows the conclusion that there was no coercion and the evidence was admissible.

III

CORPUS DELICTI

While proof of the *corpus delicti* must be the best evidence available, direct and positive evidence is not essential. It may be established, under Ohio laws, by circumstantial evidence where the inference of the happening of a criminal act complained of is the only probable or natural explanation of the proved facts and circumstances. *State* v. *Nevius,* 147 Ohio St. 263 (1947).

In the instant case, there was a tangible *corpus delicti* and there is sufficient corroborative evidence to implicate the petitioner in order to show a crime has been committed. *Smith* v. *United States,* 348 U.S. 147, 154 (1954). The implication of the defendant with possession and possession for sale of narcotics became obvious while he was at the Caldwell address, and it was sufficient to justify a finding of guilt on that basis alone. His statement of ownership of the materials was made not as a part of an accusatorial interrogation but, rather, was volunteered as the police searched his bedroom. His supposed common-law wife lived at the address and the man named "Ralph" (as the informant had

described him) arrived during the search, armed with a loaded revolver. Under this set of circumstances, the corroborative evidence is most damaging.

Therefore, even if the statements made at the police station describing only the over-all narcotics operation in which the defendant was engaged should have been excluded, arguendo, there are adequate grounds for conviction.

IV

THE SEARCH

Terry v. *Ohio*, 392 U.S. 1 (1968), authorizes a pat-down search for weapons on the basis of reasonable cause to believe that persons are contemplating crime and are armed. This proposition would be applicable in the instant case if it be ascertained that there was an invalid warrant. Should that be the case, there is every reason to believe that, under the circumstances, the police had reasonable cause to fear that defendant was armed. There was prima facie evidence before them that illegal dealing in narcotics was taking place.

Should, however, the warrant be held valid, there is within the purview of that authority the right to conduct a personal search, and evidence recovered therefrom is not inadmissible at trial on a charge of carrying a concealed weapon.

CONCLUSION

For the foregoing reasons the State of Ohio respectfully urges that the writ requested in defendant's petition be denied.

GEORGE C. SMITH
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Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing Brief in Opposition were mailed in triplicate to Jerry Weiner, 171 East Livingston Avenue, Columbus, Ohio 43215 and to Joseph C. Cizmadia, V, 169 East Livingston Avenue, Columbus, Ohio 43215, this 19th day of March, 1973.

GEORGE C. SMITH
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